IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8194 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AGARSING BHIMSING SOLANKI

Versus

STATE OF GUAJRAT

Appearance:

MR JD AJMERA for Petitioner

MS. R.V. ACHARYA, AGP, INSTRUCTED BY MS. SUMAN SINHA ADVOCATE FOR MR. S.P. HASURKAR, SOLICITORS for the respondents.

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 22/09/2000

ORAL JUDGEMENT

The petitioner has filed this petition under Article 226 of the Constitution of India praying for

quashing and setting aside the orders passed by respondent No. 2, Director General of Police, Gujarat State, Ahmedabad dated 11.1.1991 and orders passed by respondent No. 3 District Superintendent of Police, Banaskantha, Palanpur dated 17.1.1991 and 12.4.1991 and directing the respondents to take the petitioner back in service as police constable with all consequential benefits.

2. The facts giving rise to this petition are as under:-

2.1 The petitioner has stated in his petition that he joined services as Police Constable with effect from 30.6.1964 under the respondent State Government at Ambaji in Banaskantha District.

2.2 During the service the petitioner fell sick and ultimately it was found that he was suffering from T.B. He was given treatment. Ultimately, he was not able to discharge the duty as Police Constable and therefore he was ordered to go on invalid pension. The District Superintendent of Police passed an order dated 3.8.1977 to the effect that as far as the Certificate given by the Civil Surgeon, Banaskantha, Palanpur, dated 1.8.1977 the petitioner has become invalid for the service of a Police Constable and therefore he was ordered to go on invalid pension. A copy of the said order is produced at Annexure-A to the petition.

2.3 Thereafter, the petitioner has made a representation dated 1.1.1990 to respondent No. 1 that he desired to join again the services of the respondent. Pursuant to the petitioner's representation, respondent No. 3 informed the petitioner vide his letter dated 15.3.1990 that the petitioner should obtain fitness certificate from the Civil Surgeon, Banaskantha, Palanpur. Thereafter the petitioner approached the Medical Board of General Hospital, Palanpur. The Medical Board on 9.4.1990 examined the petitioner and issued a certificate that the petitioner is not suffering from T.B. and his eye sight is also good and he is fit for rendering service as Police Constable. The petitioner vide his letter dated 10.4.1990 informed respondent No. 3 that he is found fit by the Medical Board, Banaskantha, Palanpur and also enclosed a copy of the certificate issued by the Board.

2.4 It appears that Government has also issued a communication dated 13.8.1990 to the petitioner that he should also appear before the Medical Board, Civil

Hospital, Ahmedabad on 28.8.1990. The petitioner appeared before the Medical Board, Civil Hospital, Ahmedabad and he was examined by the Medical Board. But it appears that no record of the Civil Hospital, Ahmedabad, has been produced in this petition.

2.5 Thereafter, the petitioner had made representation to respondent No. 1 in December, 1990. However, the respondent No. 3 by his letter dated 17.1.1991 informed the petitioner that respondent No. 2, Director General of Police, Gujarat State, Ahmedabad had vide his letter dated 11.1.1991 rejected the petitioner's application. Thereafter, the petitioner made representation and ultimately filed the present petition before the High Court in October 1991.

3. The Court issued notice in February, 1992 and ultimately in March, 1992 the matter was admitted.

4. Mr. J.D. Ajmera, learned counsel for the petitioner has stated that in this case there is a total non-application of mind by the authorities. He has stated that the authorities wanted certificate of Civil Surgeon of Civil Hospital, Banaskantha, Palanpur which has been produced and therefore the authorities must consider that certificate and pass order regarding either reinstatement of the petitioner or rejecting his representation. He has also stated that the petitioner has appeared before the Medical Board but unfortunately, report of the Medical Board is not available with him.

5. Ms. Acharya, learned AGP, instructed by Ms. Suman Sinha, learned advocate, appeared on behalf of the respondents. She has vehemently stated that the petition of the petitioner should be rejected only on the ground that in this case invalid pension order was passed in the year 1977 whereas the petitioner has applied in the year 1990 for joining service. Learned counsel for the respondents has relied on Rule 202A(1) of The Bombay Civil Services Rules, 1959 and stated that the application of the petitioner which has been filed in the year 1990 is hopelessly time barred and the petitioner ought to have filed the application within one month from the date of his obtaining invalid pension order. Rule 202-A of the Bombay Civil Service Rules, 1959 reads as under:

> "202-A(1) If a competent authority comes to the conclusion on the report of a medical officer or any of the Standing Medical Boards that a Government servant should be retired on invalid

pension, if shall inform the Government that he has been declared to be completely and permanently incapacitated for further service and that it is proposed to invalid him. Except where it is clear that the Government servant himself desires to be invalided or where it is obvious from the nature of the disability that no useful purpose will be served by an appeal, the Government servant should at the same time, be informed that, if he so desires, he may within one month submit to the said authority as request to be examined by a Medical Appeal Board, supported by (a) prima facie evidence that good ground for an appeal exists and (b) accompanied by a treasury receipt for Rs. 48. The Government servant shall be informed that the appeal cannot be claimed as of right but that, if an application as above be made it will be considered. The Government servant concerned should also be informed of the arrangements regarding the cost of Appeal Board set forth in Rule 202-B below, but he should not be informed of the reasons which lead the medical officer or the Standing Medical Board to recommend his invaliding."

6. In my view, this is not a case where I should decide the matter on merits. Here the question is of a Police Constable who was suffering from T.B. and he has produced a certificate of Civil Hospital, Banaskantha, Palanpur, in which it has been stated that he was not suffering from T.B. However, the authorities have not considered this aspect in its true spirit.

7. I, therefore, direct that the authorities shall consider the applications/representations of the petitioner dated 1.1.1990, 10.4.1990, and Medical Certificate dated 9.4.1990 and communication dated 13.8.1990 by which he was directed to remain present before the Medical Board, Civil Hospital, Ahmedabad and the report of the examination by the Medical Board, Civil Hospital, Ahmedabad and if necessary the Government may rely on the said report.

8. This petition is of 1991 and I am deciding it today. In view of the same, I direct that respondent No. 1 authority will again consider the case of the petitioner to be examined before the Medical Board, if necessary, and after taking into consideration the said report, the authorities will consider the

application/representation of the petitioner dated 1.1.1990 in this behalf within a period of two months from today. It may be clarified that if the petitioner is being given appointment order then his employment will be in accordance with law.

9. In the result, the petition is allowed to the foresaid extent.

(K.M. MEHTA, J)

(pkn)